

AMENDED IN SENATE AUGUST 25, 2014

AMENDED IN SENATE AUGUST 18, 2014

AMENDED IN ASSEMBLY MAY 23, 2014

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 1783

Introduced by Assembly Member Jones-Sawyer

February 18, 2014

An act to amend Section 7522.02 of the Government Code, relating to public employees' retirement, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1783, as amended, Jones-Sawyer. Public employees' retirement.

The California Public Employees' Pension Reform Act of 2013 (PEPRA) requires a public retirement system, as defined, to modify its plan or plans to comply with the act and, among other provisions, establishes new retirement formulas that may not be exceeded by a public employer offering a defined benefit pension plan for employees first hired on or after January 1, 2013. PEPRA exempts from its provisions public employees whose collective bargaining rights are subject to specified provisions of federal law until a specified federal district court decision on a certification by the United States Secretary of Labor, or until January 1, 2015, whichever is sooner.

This bill would extend that exemption with respect to the above-described date to January 1, 2016.

This bill would incorporate additional changes to Section 7522.02 of the Government Code proposed by SB 1251, to be operative only if

SB 1251 and this bill are both chaptered and become effective on or before January 1, 2015, and this bill is chaptered last.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 7522.02 of the Government Code is
2 amended to read:

3 7522.02. (a) (1) Notwithstanding any other law, except as
4 provided in this article, on and after January 1, 2013, this article
5 shall apply to all state and local public retirement systems and to
6 their participating employers, including the Public Employees'
7 Retirement System, the State Teachers' Retirement System, the
8 Legislators' Retirement System, the Judges' Retirement System,
9 the Judges' Retirement System II, county and district retirement
10 systems created pursuant to the County Employees Retirement
11 Law of 1937 (Chapter 3 (commencing with Section 31450) of Part
12 3 of Division 4 of Title 3), independent public retirement systems,
13 and to individual retirement plans offered by public employers.
14 However, this article shall be subject to the Internal Revenue Code
15 and Section 17 of Article XVI of the California Constitution. The
16 administration of the requirements of this article shall comply with
17 applicable provisions of the Internal Revenue Code and the
18 Revenue and Taxation Code.

19 (2) Notwithstanding paragraph (1), this article shall not apply
20 to the entities described in Section 9 of Article IX of, and Sections
21 4 and 5 of Article XI of, the California Constitution, except to the
22 extent that these entities continue to be participating employers in
23 any retirement system governed by state statute. Accordingly, any
24 retirement plan approved before January 1, 2013, by the voters of
25 any entity excluded from coverage by this section shall not be
26 affected by this article.

27 (3) (A) Notwithstanding paragraph (1), this article shall not
28 apply to a public employee whose interests are protected under
29 Section 5333(b) of Title 49 of the United States Code until a federal
30 district court rules that the United States Secretary of Labor, or
31 his or her designee, erred in determining that the application of

1 this article precludes certification under that section, or until
2 January 1, 2016, whichever is sooner.

3 (B) If a federal district court upholds the determination of the
4 United States Secretary of Labor, or his or her designee, that
5 application of this article precludes him or her from providing a
6 certification under Section 5333(b) of Title 49 of the United States
7 Code, this article shall not apply to a public employee specified
8 in subparagraph (A).

9 (4) Notwithstanding paragraph (1), this article shall not apply
10 to a multiemployer plan authorized by Section 302(c)(5) of the
11 federal Taft-Hartley Act (29 U.S.C. Sec. 186(c)(5)) if the public
12 employer began participation in that plan prior to January 1, 2013,
13 and the plan is regulated by the federal Employee Retirement
14 Income Security Act of 1974 (29 U.S.C. Sec. 1001 et seq.).

15 (b) The benefit plan required by this article shall apply to public
16 employees who are new members as defined in Section 7522.04.

17 (c) (1) Individuals who were employed by any public employer
18 before January 1, 2013, and who became employed by a subsequent
19 public employer for the first time on or after January 1, 2013, shall
20 be subject to the retirement plan that would have been available
21 to employees of the subsequent employer who were first employed
22 by the subsequent employer on or before December 31, 2012, if
23 the individual was subject to concurrent membership for which
24 creditable service was performed in the previous six months or
25 reciprocity established under any of the following provisions:

26 (A) Article 5 (commencing with Section 20350) of Chapter 3
27 of Part 3 of Division 5 of Title 2.

28 (B) Chapter 3 (commencing with Section 31450) of Part 3 of
29 Division 4 of Title 3.

30 (C) Any agreement between public retirement systems to provide
31 reciprocity to members of the systems.

32 (D) Section 22115.2 of the Education Code.

33 (2) An individual who was employed before January 1, 2013,
34 and who, without a separation from employment, changed
35 employment positions and became subject to a different defined
36 benefit plan in a different public retirement system offered by his
37 or her employer shall be subject to that defined benefit plan as it
38 would have been available to employees who were first employed
39 on or before December 31, 2012.

(d) If a public employer, before January 1, 2013, offers a defined benefit pension plan that provides a defined benefit formula with a lower benefit factor at normal retirement age and results in a lower normal cost than the defined benefit formula required by this article, that employer may continue to offer that defined benefit formula instead of the defined benefit formula required by this article, and shall not be subject to the requirements of Section 7522.10 for pensionable compensation subject to that formula. However, if the employer adopts a new defined benefit formula on or after January 1, 2013, that formula must conform to the requirements of this article or must be determined and certified by the retirement system's chief actuary and the retirement board to have no greater risk and no greater cost to the employer than the defined benefit formula required by this article and must be approved by the Legislature. New members of the defined benefit plan may only participate in the lower cost defined benefit formula that was in place before January 1, 2013, or a defined benefit formula that conforms to the requirements of this article or is approved by the Legislature as provided in this subdivision.

(e) If a public employer, before January 1, 2013, offers a retirement benefit plan that consists solely of a defined contribution plan, that employer may continue to offer that plan instead of the defined benefit pension plan required by this article. However, if the employer adopts a new defined benefit pension plan or defined benefit formula on or after January 1, 2013, that plan or formula must conform to the requirements of this article or must be determined and certified by the retirement system's chief actuary and the system's board to have no greater risk and no greater cost to the employer than the defined benefit formula required by this article and must be approved by the Legislature. New members of the employer's plan may only participate in the defined contribution plan that was in place before January 1, 2013, or a defined contribution plan or defined benefit formula that conforms to the requirements of this article. This subdivision shall not be construed to prohibit an employer from offering a defined contribution plan on or after January 1, 2013, either with or without a defined benefit plan, whether or not the employer offered a defined contribution plan prior to that date.

(f) The Judges' Retirement System and the Judges' Retirement System II shall not be required to adopt the defined benefit formula

1 required by Section 7522.20 or 7522.25 or the compensation
2 limitations defined in Section 7522.10.

3 (g) This article shall not be construed to provide membership
4 in any public retirement system for an individual who would not
5 otherwise be eligible for membership under that system's
6 applicable rules or laws.

7 (h) On and after January 1, 2013, each public retirement system
8 shall modify its plan or plans to comply with the requirements of
9 this article and may adopt regulations or resolutions for this
10 purpose.

11 *SEC. 2. Section 7522.02 of the Government Code is amended*
12 *to read:*

13 7522.02. (a) (1) Notwithstanding any other law, except as
14 provided in this article, on and after January 1, 2013, this article
15 shall apply to all state and local public retirement systems and to
16 their participating employers, including the Public Employees'
17 Retirement System, the State Teachers' Retirement System, the
18 Legislators' Retirement System, the Judges' Retirement System,
19 the Judges' Retirement System II, county and district retirement
20 systems created pursuant to the County Employees Retirement
21 Law of ~~1937~~, 1937 (*Chapter 3 (commencing with Section 31450)*
22 *of Part 3 of Division 4 of Title 3*), independent public retirement
23 systems, and to individual retirement plans offered by public
24 employers. However, this article shall be subject to the Internal
25 Revenue Code and Section 17 of Article XVI of the California
26 Constitution. The administration of the requirements of this article
27 shall comply with applicable provisions of the Internal Revenue
28 Code and the Revenue and Taxation Code.

29 (2) Notwithstanding paragraph (1), this article shall not apply
30 to the entities described in Section 9 of Article IX of, and Sections
31 4 and 5 of Article XI of, the California Constitution, except to the
32 extent that these entities continue to be participating employers in
33 any retirement system governed by state statute. Accordingly, any
34 retirement plan approved before January 1, 2013, by the voters of
35 any entity excluded from coverage by this section shall not be
36 affected by this article.

37 (3) (A) Notwithstanding paragraph (1), this article shall not
38 apply to a public employee whose interests are protected under
39 Section 5333(b) of Title 49 of the United States Code until a federal
40 district court rules that the United States Secretary of Labor, or

1 his or her designee, erred in determining that the application of
2 this article precludes certification under that section, or until
3 January 1, ~~2015~~, 2016, whichever is sooner.

4 (B) If a federal district court upholds the determination of the
5 United States Secretary of Labor, or his or her designee, that
6 application of this article precludes him or her from providing a
7 certification under Section 5333(b) of Title 49 of the United States
8 Code, this article shall not apply to a public employee specified
9 in subparagraph (A).

10 (4) Notwithstanding paragraph (1), this article shall not apply
11 to a multiemployer plan authorized by Section 302(c)(5) of the
12 *federal* Taft-Hartley Act (29 U.S.C. Sec. 186(c)(5)) if the public
13 employer began participation in that plan prior to January 1, 2013,
14 and the plan is regulated by the *federal* Employee Retirement
15 Income Security Act of 1974 (29 U.S.C. Sec. 1001 *et seq.*).

16 (b) The benefit plan required by this article shall apply to public
17 employees who are new members as defined in Section 7522.04.

18 (c) (1) Individuals who were employed by any public employer
19 before January 1, 2013, and who became employed by a subsequent
20 public employer for the first time on or after January 1, 2013, shall
21 be subject to the retirement plan that would have been available
22 to employees of the subsequent employer who were first employed
23 by the subsequent employer on or before December 31, 2012, if
24 the individual was subject to concurrent membership for which
25 creditable service was performed in the previous six months or
26 reciprocity established under any of the following provisions:

27 (A) Article 5 (commencing with Section 20350) of Chapter 3
28 of Part 3 of Division 5 of Title 2.

29 (B) Chapter 3 (commencing with Section 31450) of Part 3 of
30 Division 4 of Title 3.

31 (C) Any agreement between public retirement systems to provide
32 reciprocity to members of the systems.

33 (D) Section 22115.2 of the Education Code.

34 (2) An individual who was employed before January 1, 2013,
35 and who, without a separation from employment, changed
36 employment positions and became subject to a different defined
37 benefit plan in a different public retirement system offered by his
38 or her employer shall be subject to that defined benefit plan as it
39 would have been available to employees who were first employed
40 on or before December 31, 2012.

1 (d) If a public employer, before January 1, 2013, offers a defined
2 benefit pension plan that provides a defined benefit formula with
3 a lower benefit factor at normal retirement age and results in a
4 lower normal cost than the defined benefit formula required by
5 this article, that employer may continue to offer that defined benefit
6 formula instead of the defined benefit formula required by this
7 article, and shall not be subject to the requirements of Section
8 7522.10 for pensionable compensation subject to that formula.
9 However, if the employer adopts a new defined benefit formula
10 on or after January 1, 2013, that formula must conform to the
11 requirements of this article or must be determined and certified by
12 the retirement system's chief actuary and the retirement board to
13 have no greater risk and no greater cost to the employer than the
14 defined benefit formula required by this article and must be
15 approved by the Legislature. New members of the defined benefit
16 plan may only participate in the lower cost defined benefit formula
17 that was in place before January 1, 2013, or a defined benefit
18 formula that conforms to the requirements of this article or is
19 approved by the Legislature as provided in this subdivision.

20 (e) If a public employer, before January 1, 2013, offers a
21 retirement benefit plan that consists solely of a defined contribution
22 plan, that employer may continue to offer that plan instead of the
23 defined benefit pension plan required by this article. However, if
24 the employer adopts a new defined benefit pension plan or defined
25 benefit formula on or after January 1, 2013, that plan or formula
26 must conform to the requirements of this article or must be
27 determined and certified by the retirement system's chief actuary
28 and the system's board to have no greater risk and no greater cost
29 to the employer than the defined benefit formula required by this
30 article and must be approved by the Legislature. New members of
31 the employer's plan may only participate in the defined
32 contribution plan that was in place before January 1, 2013, or a
33 defined contribution plan or defined benefit formula that conforms
34 to the requirements of this article. This subdivision shall not be
35 construed to prohibit an employer from offering a defined
36 contribution plan on or after January 1, 2013, either with or without
37 a defined benefit plan, whether or not the employer offered a
38 defined contribution plan prior to that date.

39 (f) (1) *If, on or after January 1, 2013, the Cities of Brea and*
40 *Fullerton form a joint powers authority pursuant to the provisions*

1 of the Joint Exercise of Powers Act (Article 1 (commencing with
2 Section 6500) of Chapter 5), that joint powers authority may
3 provide employees the defined benefit plan or formula that those
4 employees received from their respective employers on December
5 31, 2012, to any employee of the City of Brea, the City of Fullerton,
6 or a city described in paragraph (2) who is not a new member and
7 subsequently is employed by the joint powers authority without a
8 break in service of more than 180 days.

9 (2) On or before January 1, 2017, a city in Orange County that
10 is contiguous to the City of Brea or the City of Fullerton may join
11 the joint powers authority described in paragraph (1) but not more
12 than three cities shall be permitted to join.

13 (3) The formation of a joint powers authority on or after January
14 1, 2013, shall not act in a manner as to exempt a new employee
15 or a new member, as defined by Section 7522.04, from the
16 requirements of this article. New members may only participate
17 in a defined benefit plan or formula that conforms to the
18 requirements of this article.

19 ~~(f)~~

20 (g) The Judges' Retirement System and the Judges' Retirement
21 System II shall not be required to adopt the defined benefit formula
22 required by Section 7522.20 or 7522.25 or the compensation
23 limitations defined in Section 7522.10.

24 ~~(g)~~

25 (h) This article shall not be construed to provide membership
26 in any public retirement system for an individual who would not
27 otherwise be eligible for membership under that system's
28 applicable rules or laws.

29 ~~(h)~~

30 (i) On and after January 1, 2013, each public retirement system
31 shall modify its plan or plans to comply with the requirements of
32 this article and may adopt regulations or resolutions for this
33 purpose.

34 SEC. 3. Section 2 of this bill incorporates amendments to
35 Section 7522.02 of the Government Code proposed by both this
36 bill and SB 1251. It shall only become operative if (1) both bills
37 are enacted and become effective on or before January 1, 2015,
38 but this bill becomes operative first, (2) each bill amends Section
39 7522.02 of the Government Code, and (3) this bill is enacted after
40 SB 1251, in which case Section 7522.02 of the Government Code,

1 *as amended by Section 1 of this bill, shall remain operative only*
2 *until the operative date of SB 1251, at which time Section 2 of this*
3 *bill shall become operative.*

4 ~~SEC. 2.~~

5 SEC. 4. This act is an urgency statute necessary for the
6 immediate preservation of the public peace, health, or safety within
7 the meaning of Article IV of the Constitution and shall go into
8 immediate effect. The facts constituting the necessity are:

9 In order to remain eligible for federal transportation funds that
10 would be forfeited if transit employees are not exempt from
11 PEPRRA, it is necessary for this act to go into effect immediately.

O